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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

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10 FLORANTE BAUTISTA,
11 Plaintiff,

No. C 09-596 WDB

ORDER FOLLOWING INITIAL
CASE MANAGEMENT
CONFERENCE

12 v.

13 WASHINGTON MUTUAL
14 BANK, et al.

15 Defendants.
16 _____/

17 On May 20, 2009, the Court convened for an initial case management
18 conference in this action. Defendants' counsel appeared by telephone. No appearance
19 was made by or on behalf of plaintiff.

20 As recounted on the record, proceedings thus far can be summarized as follows.

21 On February 10, 2009, plaintiff filed his Complaint at Common Law for
22 Damages and Equitable Relief. At the time the case was filed the Court's computer
23 case assignment system assigned a case number to plaintiff's action and immediately
24 issued an "Order Setting Initial Case Management Conference and ADR Deadlines."
25 This Order scheduled an initial case management conference for May 20, 2009, at
26 4:00 p.m. See, Order, filed February 10, 2009.

27 Plaintiff's Complaint is almost impenetrable, and it was the subject of a Motion
28 to Dismiss filed by defendants. On March 12, 2009, defendants served plaintiff with
their Motion to Dismiss by mailing a copy of the Motion to plaintiff's address, 234

1 Morton Drive, Daly City, California, 94015. See Proof of Service attached to Motion.
2 Defendants' Motion expressly notified plaintiff that the Court would conduct a
3 hearing on April 27, 2009, in connection with the Motion.

4 On March 19, 2009, the Court's staff served the parties with a notice advising
5 the parties that they needed to consent to the Magistrate Judge's jurisdiction or request
6 reassignment to a District Judge.¹ This Notice instructed the parties to make an
7 election by April 6, 2009. Clerk's Notice, filed March 19, 2009.

8 Both parties responded. On April 3, 2009, plaintiff filed a copy of his Consent
9 to Proceed Before a Magistrate Judge. This document appears to be signed by
10 plaintiff.²

11 On April 7, 2009, the Court served an Order alerting plaintiff that he had not
12 filed a timely opposition to defendant's Motion to Dismiss and giving plaintiff
13 additional time, until April 13, 2009, to file his opposition.

14 On April 13, 2009, the deadline set by the Court, plaintiff filed a Response to
15 the Motion to Dismiss. It is noteworthy that this document was signed by plaintiff,
16 that is, the document bears the same signature as the Complaint and Consent to
17 Proceed Before a Magistrate Judge.

18 Plaintiff failed to appear at the hearing on April 27, 2009.

19 On April 28, 2009, the Court issued an order directing plaintiff to file with the
20 Court and serve on defendants a statement explaining why he did not appear at the
21 April 27th hearing. The Court instructed plaintiff that he was to file his explanation
22 by May 7, 2009 or the Court would dismiss his Complaint with prejudice. See,
23 Conditional Order Dismissing With Prejudice Complaint filed February, 10, 2009,
24 filed April 28, 2009.

25 On May 4, 2009, plaintiff responded to the Court's April 28th Order by filing a
26 document styled "Motion for Reconsideration in Support of Plaintiffs, Non

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28 ¹All documents mailed by the Court to plaintiff have been mailed to plaintiff's reported address, 234 Morton Drive, Daly City, California 94015.

²Plaintiff's Consent to Proceed bears the same signature as that on the Complaint.

1 Appearance on Scheduled Hearing on April 27, 2009 2:30 PM.” Plaintiff alleged that
2 he was out of the country on an “emergency business trip” between March 10, 2009
3 and April 25, 2009 and that he did not have notice of the hearing until April 27, 2009
4 at 4:00 p.m., after the hearing had concluded. This document bears the same signature
5 reflected on all documents previously filed by plaintiff.

6 It is not obvious to us how plaintiff might have filed documents signed by him
7 on April 3rd and April 13th if he was out of the country at that time. Because of the
8 apparent tension between his explanation for failing to appear at the April 27th
9 hearing and his having filed signed documents on April 3rd and 13th, the Court
10 submitted a subsequent order directing plaintiff to file by May 12, 2009, an
11 explanation for this tension. See, Order, filed May 5, 2009. The Court also warned
12 plaintiff that if he did not file a response to the Court’s May 5th Order, the Court
13 would dismiss his Complaint with prejudice.

14 Additionally, on May 1, 2009, after receiving the Court’s Conditional Order
15 dismissing his complaint but before sending the Court his May 4th explanation for
16 failing to appear at the hearing on defendants’ Motion to Dismiss, plaintiff filed a
17 document styled “Notice of Appeal.” On May 7, 2009, the Court of Appeals
18 acknowledged this filing.

19 Plaintiff filed his appeal prematurely as this Court had not yet entered a final
20 order disposing of the action. It is possible that plaintiff did not appear at the May 20,
21 2009, initial case management conference because he believed that this Court no
22 longer had jurisdiction over his case in light of his appeal. However, a few days *after*
23 filing his appeal plaintiff filed a document with this Court asking the court to
24 “reconsider” its conditional order of dismissal (filed May 4th). This May 4th
25 document suggests that, as of that date, plaintiff believed that this Court continued to
26 have jurisdiction in this matter.

27 Plaintiff’s Complaint fails to articulate a judicially cognizable right, and
28 plaintiff has failed to appear in this Court on multiple occasions and failed to respond
to the Court’s May 5th Order.

1 Accordingly, for the reasons stated in this and prior orders, the Court
2 DISMISSES WITH PREJUDICE plaintiff's entire Complaint.

3 **IT IS SO ORDERED.**

4 Dated: May 22, 2009

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6 WAYNE D. BRAZIL
7 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

Florante Bautista,
Plaintiff,

Case Number: C 09-596 WDB

CERTIFICATE OF SERVICE

v.

Washington Mutual Bank, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in Office of the Clerk, U.S. District Court, Northern District of California.

That on May 22, 2009, I SERVED a true and correct copy(ies) of the attached Order by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Florante Bautista
234 Morton Drive
Daly City, CA, 94015

Dated: May 22, 2009

Richard W. Wieking, Clerk

Michelle Sicula

By: Michelle Sicula, Law Clerk/Deputy Clerk